

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
CHATTANOOGA DIVISION**

SKF USA INC.

Plaintiff,

v.

CRESWELL RICHARDSON,

Defendant.

CIVIL ACTION NO.

**DECLARATION OF
JAMES FORTNER**

I, JAMES FORTNER, being duly sworn, do hereby depose and say:

1. I am an individual citizen of the State of Alabama who resides at 504 County Road 703, Higdon, Alabama 35979. I make this declaration in support of Plaintiff SKF USA Inc.'s Motion for Preliminary Injunction and Expedited Discovery.

2. I have worked in the industrial investment recovery field for over 35 years. As part of my career in this field, I purchase products, equipment, materials, and other items from factories and manufacturing facilities that no longer require the items. I then sell those items to other industrial facilities for future use or sell the material for scrap.

3. During my time in this profession, I have done business with a company known as Creswell Industrial Supply ("Creswell Industrial") of Chattanooga, Tennessee and its owner, Bob Creswell. I understand that Creswell Industrial has now become Creswell Richardson after merging with Richardson Electric also of Chattanooga.

4. To the best of my recollection, in the early part of September 2009, I was at Creswell Richardson's supply house where I was meeting with Mr. Bob Creswell. During our

meeting we had a conversation about a supply of some bearings that Creswell Richardson had that Mr. Creswell wanted to sell to me. Mr. Creswell asked me if I would be interested in purchasing the bearings.

5. After speaking with Mr. Creswell, I made some phone calls to see if there would be any interest in the bearings before I committed to buying the bearings from Mr. Creswell. I reached out to several people including small motor shops and other individual contacts of mine to determine interest.

6. During that time, I also called Ray Hudson of Spartanburg, South Carolina about the bearings to see if he might be able to find a customer for them. I had worked with Mr. Hudson numerous times throughout my career both as a buyer and as a seller. I told Mr. Hudson that if he could find a customer for the bearings, then I would go ahead and purchase the bearings from Mr. Creswell.

7. Mr. Hudson informed me that he had a contact in South Carolina who was interested in purchasing the bearings.

8. I called Mr. Creswell about a week and a half after my first conversation with him to tell him that I would be interested in purchasing the bearings. I drove my trailer from my home in Higdon, Alabama to meet with Mr. Creswell at one of the storage facilities used by Creswell Industrial Supply located in Chattanooga to pick up the bearings and to pay for them.

9. Mr. Creswell and I did not discuss the purchase price for the bearings until the day I purchased them. At first Mr. Creswell offered to sell the bearings to me for \$2.00 per pound. We ultimately agreed on a price of \$1.25 per pound. In my experience, this price was

accurate for a stock of surplus or overstock bearings where the bearings are sold by the pound, not by the individual part. I knew that I should be able to sell them for more than that amount.

10. When I entered the facility, the bearings were packed on several pallets. At this time, Mr. Creswell told me that he did not want to sell all of the bearings to me. He took out approximately 2,000 pounds of bearings from the pallets. Most of the boxes he removed were marked "SKF". The approximate weight of the bearings I purchased was 7,800 pounds. The bearings I purchased were also labeled "SKF".

11. After loading the bearings, I followed Mr. Creswell back to the Creswell's offices in Chattanooga, Tennessee to pay Mr. Creswell for the bearings. I paid Mr. Creswell \$9,400.00 in cash. I agreed to pay the remaining balance of \$411.00 by certified check. I delivered the certified check to Creswell's offices about one week later. The certified check was made payable to Creswell Industrial Supply.

12. After the bearings were loaded, I transported the load of bearings to my home in Higdon, Alabama. Once I got back to Higdon, I contacted Mr. Hudson to let him know that the bearings were ready for him to pick up.

13. Mr. Hudson came to my house and then the two of us went out looking for a rental truck for Mr. Hudson to use to transport the bearings. We took the rental truck back to my house and loaded it with the bearings. Mr. Hudson drove off alone with the load of bearings to deliver to the customer he had found for them. He returned to my house the following day to pay me for the bearings.

14. I did not know who Mr. Hudson was going to deliver the bearings to, but Mr. Hudson did inform me that he had a buyer for them.

I declare that all facts and allegations contained in this Declaration are true to the best of my own knowledge; that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this Declaration.

Dated: November 18, 2009


JAMES FORTNER